

APPEAL NO. 020402
FILED APRIL 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 3 and 4, 2001, with the record closing December 4, 2001. The hearing officer resolved the sole disputed issue by deciding that the respondent (claimant) did not sustain a compensable repetitive trauma injury in the form of an occupational disease and thus had no resulting disability. Neither party appears to have appealed the hearing officer's decision and order. The attorney for the carrier (attorney) requested compensation for the work done by her office in this case.

On January 28, 2002, a Texas Workers' Compensation Commission (Commission) employee, who is not a hearing officer, issued a Commission Order for Attorney's Fees (Order), covering services for the period from October 17, 2001, through October 31, 2001, approving some of the requested fees and expenses, except for 3.2 hours requested for drafting letters, drafting and filing pleadings, and reviewing the file. These 3.2 hours were disapproved for the reason "Ex Guideline/Unreasonable," i.e., as exceeding the statutory guidelines or as being unreasonable. The attorney appeals, asserting that she should be compensated for the disputed 3.2 hours because all time spent on the case was reasonable and necessary for a competent defense of the claim. The attorney asserts that she is familiar with the matters in controversy, that they are complex, and that this matter required additional time for review because of voluminous documentary evidence. In addition, the attorney argues that the defense of this claim required contacts with the carrier, the employer, medical providers and/or witnesses.

DECISION

The Order not being entered by a hearing officer, no jurisdictional basis exists for our review. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1 (Rule 152.1). Rule 152.3(d) requires any party who wants to contest fees fixed and approved by the Commission to request a "benefit [CCH]." The only exception is Rule 152.3(e), which provides: "[a]n attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a benefit [CCH] shall request review by the appeals panel pursuant to the provisions of §143.3 of this title (relating to Requesting the Appeals Panel to review the Decision of the Hearing Officer)." As the Order in this case was not issued by a hearing officer, the Appeals Panel lacks jurisdiction to review the disputed attorney's fees.

The true corporate name of the carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

CONCURRING OPINION:

I reluctantly concur based on past precedent; however, I find the [Texas Workers' Compensation] Commission Order for Attorney's Fees form (Order) very confusing and subject to differing interpretation. The reader of that form could read it that to contest the Order the person contesting the Order "must request a **benefit contested case hearing** or appeal the decision of the hearing officer to the **appeals panel**." (Emphasis added.) This sounds like an either/or and further requires the person contesting the Order to know that the person entering the Order is not a hearing officer. I would have preferred a hearing officer enter the Order.

Thomas A. Knapp
Appeals Judge